

APPENDIX F.

MICRA AND EDACPA LEGAL REFERENCES

CALIFORNIA ELDER ABUSE & DEPENDENT ADULT CIVIL PROTECTION ACT
(Welfare & Institutions Code Sections 15600-15675)

Purpose: The purpose and legislative intent of the *Elder Abuse & Dependent Adult Civil Protection Act* was based on the recognition that elders and dependent adults may be subjected to abuse, neglect, or abandonment and that this state has a responsibility to protect these persons. (*Welfare & Institutions Code Section 15600*)

What is Elder Abuse? “Abuse of an elder or a dependent adult’ means either of the following: (a) Physical abuse, neglect, financial abuse, abandonment, isolation, abduction, or other treatment with resulting physical harm or pain or mental suffering. (b) The deprivation by a care custodian of goods or services that are necessary to avoid physical harm or mental suffering.” (*Welfare & Institutions Code Section 15610.07*)

Definitions of Elder Abuse:

Abandonment – “Means the desertion or willful forsaking of an elder or dependent adult by anyone having care or custody of that person under circumstances in which a reasonable person would continue to provide care and custody.” (*W&I 15610.05*)

Abduction – “Means the removal from this state and the restraint from returning to this state, or the restraint from returning to this state, of any elder or dependent adult who does not have the capacity to consent to the removal from this state and the restraint from returning to this state...of any conservatee without the consent of the conservator or the court.” (*W&I 15610.06*)

Fiduciary, or Financial Abuse – Means the taking, secreting, or appropriating an elder’s money or property for a wrongful use, or with the intent to defraud, by a person who has care or custody of the elder or stands in a position of trust to the elder. (*W&I 15610.30*)

Isolation – “Means intentionally preventing an elder from receiving mail or telephone calls, wrongfully informing visitors or callers that the elder does not wish to see or talk with them; false imprisonment; physically restraining an elder from meeting with visitors.

Mental Suffering – Means fear, agitation, confusion, severe depression, or other forms of serious emotional distress resulting from threats, harassment, or other forms of intimidating behavior. (*W&I 15610.53*)

Neglect – “Means...the negligent failure of any person having the care or custody of an elder or a dependent adult to exercise that degree of care or custody of an elder or dependent adult...that a reasonable person in a like position would exercise or the negligent failure of the person themselves to exercise that degree of care that a reasonable person in a like position would exercise.” (*W&I 15610.57*)

Physical Abuse – Means the assault, battery, assault with a deadly weapon, unreasonable physical constraint or prolonged deprivation of food or water, sexual assault, sexual battery, rape, incest, sodomy, oral copulation, penetration of a genital or anal opening by a foreign object or use of physical or chemical restraint or psychotropic medication for punishment, or period longer than prescribed, or for any Purpose not authorized by a physician. (*W&I 15610.63*)

REPORTING ELDER ABUSE

Welfare & Institutions Code Section 15630(a): “Any person who has assumed full or intermittent responsibility for care or custody of an elder or dependent adult, whether or not that person receives compensation, including administrators, supervisors, and any licensed staff of a public or private facility that provides care or services for elder or dependent adults, or any elder or dependent adult care custodian, health practitioner, or employee of a county adult protective services agency or a local law enforcement agency is a mandated reporter.”

Welfare & Institutions Code Section 15630(b)(1): “Any mandated reporter, who in his or her professional capacity, or within the scope of his or her employment, has observed or has knowledge of an incident that reasonably appears to be physical abuse, abandonment, isolation, financial abuse, or neglect, or is told by an elder or dependent adult that he or she has experienced behavior constituting physical abuse, abandonment, isolation, financial abuse, or neglect, or reasonably suspects that abuse shall report the known or suspected instance of abuse, by telephone immediately or as soon as practically possible, and by written report...”

REPORTING REQUIREMENTS OF AB 1731, ADDED BY STATUTE IN 2000 as HEALTH & SAFETY CODE SECTION 1418.91.

Reports of Incidents of Alleged Abuse or Suspected Abuse of Residents:

- (a) A long-term health care facility shall report all incidents of alleged abuse or suspected abuse of a resident of the facility to the department immediately, or within 24 hours.
- (b) A failure to comply with the requirements of this section shall be a class “B” violation.
- (c) For purposes of this section, “abuse” shall mean any of the conduct described in subdivisions (a) and (b) of Section 15610.07 of the Welfare and Institutions Code.
- (d) This section shall not change any reporting requirements under Section 15630 of the Welfare and Institutions Code, or as otherwise specified in the Elder Abuse and Dependent Adult Civil Protection Act, Chapter 11, (commencing with Section 15600) of Part 3 of Division 9 of the Welfare and Institutions Code.

CIVIL ACTIONS UNDER THE ELDER ABUSE & DEPENDENT ADULT CIVIL PROTECTION ACT (WELFARE & INSTITUTIONS CODE SECTION 15657)

Welfare and Institutions Code Section 15600(h) “The Legislature further finds and declares that infirm elderly persons and dependent adults are a disadvantaged class, that cases of abuse of these persons are seldom prosecuted as criminal matters, and few civil cases are brought in connection with this abuse due to problems of proof, court delays, and the lack of incentives to prosecute these suits.”

The addition of Welfare and Institutions Code Section 15657 included incentives that shifted the focus to private, civil enforcement of elder abuse laws as evidenced by the language of Welfare and Institutions Code Section 15657 and 15600(j) which states; “It is the further intent of the Legislature in adding Article 8.5 (commencing with Section 15657) to this chapter to enable interested persons to engage attorneys to take up the cause of abused elderly persons and dependent adults.”

Elements of Welfare & Institutions Code Section 15657:

“Where it is proven by clear and convincing evidence that a defendant is liable for physical abuse, as defined in Section 15610.63, neglect as defined in Section 15610.57, or fiduciary abuse as defined in Section 15610.30, and that the defendant has been guilty of recklessness, oppression, fraud, or malice in the commission of this abuse, in addition to all other remedies otherwise provided by law:

- (a) The court shall award to the plaintiff reasonable attorney’s fees and costs. The term “costs” includes, but is not limited to, reasonable fees for the services of a conservator, if any, devoted to the litigation of a claim brought under this article.
- (b) ...[H]owever, the damages recovered shall not exceed the damages permitted to be recovered pursuant to subdivision (b) of Section 3333.2 of the Civil Code.
- (c) The standards set forth in subdivision (b) of Section 3294 of the Civil Code regarding the imposition of punitive damages on an employer based upon the acts of an employee shall be satisfied before any damages or attorney’s fees permitted under this section may be imposed against an employer.

Enhanced Remedies:

The enhanced remedies under the *Elder Abuse & Dependent Adult Civil Protection Act* include the award of reasonable attorney’s fees and costs to the plaintiff and a conservator, if any, devoted to a claim brought under the *Elder Abuse & Dependent Adult Civil Protection Act*, general damages for a decedent’s pain and suffering in an amount no greater than \$250,000 per Civil Code Section 3333.2, and the award of Punitive Damages based on Section 3294 of the Civil Code.

**CIVIL CODE SECTION 3333.2
(MEDICAL INJURY COMPENSATION REFORM ACT [MICRA])**

The Medical Injury Compensation Reform Act [MICRA] of 1975 placed a limit of \$250,000 on the non-economic losses that could be recovered against a health care provider for a negligence cause of action.

Elements of Civil Code Section 3333.2:

- (a) In any action for injury against a health care provider based on professional negligence, the injured plaintiff shall be entitled to recover noneconomic losses to compensate for pain, suffering, inconvenience, physical impairment, disfigurement and other non-pecuniary damage.
- (b) In no action shall the amount of damages for non-economic losses exceed two hundred fifty thousand dollars (\$250,000).
- (c) For the purposes of this section:
 - (1) "Health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider;
 - (2) "Professional negligence" means a negligent act or omission to act by a health care provider in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death, provided that such services are within the scope of services for which the provider is licensed and which are not within any restriction imposed by the licensing agency or a licensed hospital."

**STANDARD SET FORTH IN CIVIL CODE SECTION 3294
FOR PUNITIVE DAMAGES UNDER
WELFARE AND INSTITUTIONS CODE SECTION 15657(c)**

Elements of Civil Code Section 3294:

- (a) In an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud, or malice, the plaintiff, in addition to the actual damages, may recover damages for the sake of example and by way of punishing the defendant.
- (b) An employer shall not be liable for damages pursuant to subdivision (a), based upon acts of an employee of the employer, unless the employer had advance knowledge of the unfitness of the employee and employed him or her with a conscious disregard of the rights or safety of others or authorized or ratified the wrongful conduct for which the damages are awarded or was personally guilty of oppression, fraud, or malice. With respect to a corporate employer, the advance knowledge and conscious disregard, authorization, ratification or act of oppression, fraud, or malice must be on the part of an officer, director, or managing agent of the corporation.
- (c) As used in this section, the following definitions shall apply:
 - (1) "Malice" means conduct which is intended by the defendant to cause injury to the plaintiff or despicable conduct which is carried on by the defendant with a willful and conscious disregard of the rights or safety of others.
 - (2) "Oppression" means despicable conduct that subjects a person to cruel and unjust hardship in conscious disregard of that person's rights.
 - (3) "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact known to the defendant with the intention on the part of the defendant of thereby depriving a person of property or legal rights or otherwise causing injury.

**APPLICATION OF CODE OF CIVIL PROCEDURE SECTION 425.13 TO
PUNITIVE DAMAGE CLAIMS BROUGHT UNDER THE ELDER ABUSE & DEPENDENT ADULT
CIVIL PROTECTION ACT
(W&I CODE 15657) AND CIVIL CODE SECTION 3294**

Code of Civil Procedure Section 425.13:

- (a) In any action for damages arising out of the professional negligence of a health care provider, no claim for punitive damages shall be included in a complaint or other pleading unless the court enters an order allowing an amended pleading that includes a claim for punitive damages to be filed. The court may allow the filing of an amended pleading claiming punitive damages on a motion by the party seeking the amended pleading and on the basis of the supporting and opposing affidavits presented that the plaintiff has established that there is a substantial probability that the plaintiff will prevail on the claim pursuant to Section 3294 of the Civil Code. The court shall not grant a motion allowing the filing of an amended pleading that includes a claim for punitive damages if the motion for such an order is not filed within two years after the complaint of initial pleading is filed or not less than nine months before the date the matter is first set for trial, whichever is earlier.
- (b) For the purposes of this section, "health care provider" means any person licensed or certified pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code, or licensed pursuant to the Osteopathic Initiative Act, or the Chiropractic Initiative Act, or licensed pursuant to Chapter 2.5 (commencing with Section 1440) of Division 2 of the Health and Safety Code; and any clinic, health dispensary, or health facility, licensed pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code. "Health care provider" includes the legal representatives of a health care provider.